IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13984 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARWAD VASHRAMBHAI NAGJIBHAI

Versus

STATE OF GUARAT THRO SECRETARY REVENUE DEPARTMENT

Appearance:

1. Special Civil Application No. 13984 of 2004

MR BD KARIA for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 20/12/2004

ORAL JUDGEMENT

As the notice for final disposal is issued, the matter is finally heard.

2. The short facts of the case are that one Bharwad Nagji Kamabhai was allotted the land as new tenure land in the year 1956 for the purpose of cultivation. It appears that in he year 1994 the Dy.Collector issued notice on the ground that the land is transferred to the son Vashrambhai Nagjibhai who is the petitioner herein by family arrangement. Thereafter, it appears that ultimately the Dy.Collector found that the land is given to the father and he has transferred the land to his son Vashrambhai Nagjibhai who is the petitioner herein by family arrangement, therefore, there is breach of condition and the land came to be forfeited by the order, dated 9.10.1995. The petitioner carried the matter before the Dist.Collector as well as before the State Govt., and both ultimately confirmed the order passed by the Dy.Collector. It is, under these circumstances, the petitioner has approached this court, by this petition.

3. Heard Mr.Karia for the petitioner and Mr.Desai, Ld.AGP for the respondent authorities.

4. It appears that there is no dispute on the point that the petitioner is the son of deceased Nagji Kamabhai who was allotted the land by the State Govt for cultivation. The case of the petitioner is that he is the only son of the deceased and there is no other legal heir of the deceased Nagji Kamabhai. The Dy.Collector in the impugned order has merely relied upon the Entry No.737 for division of the property of the deceased Nagji Kamabhai. However, in the said entry it has been recorded that the division is made during the life time of the deceased Nagji Kamabhai. Therefore, it is found that there is breach of condition. It appears that, the approach on the part of the revenue authorities is not only wholly unjustified but on the facts and in law can not be sustained because the petitioner is a direct successor of Nagji Kamabhai who has been allotted the land for cultivation. It is not a matter whereby by the revenue entry the land is transferred to a third party or to a party who is not a successor of the original allottee/grantee. The division amongst the direct legal heirs of the allottee or grantee of the land by family arrangement as per Hindu law is not a principle unknown. If by way of family settlement or arrangement the division of the property and/or rights of the property are allotted to the direct legal heirs, it can not be said that such would be a breach of condition which would warrant the forfeiture of the land. As such, it is settled legal position that if by family settlement or arrangement the shares are are identified it can not be

said that such would fall as actual transfer but it can be said as identification of shares by partition or otherwise.

5. In the present case, as the petitioner is only the legal heir in the capacity of the son of the deceased who was granted the land and by revenue entry, it is shown in the name of the petitioner and the same can not be said to be a breach of condition since the same can not be said as transfer of interest in favour of the person who had no interest whatsoever over the land. Even otherwise also as per the Hindu Law the legal heirs of the father will have the interest over the property and such share or interest can be identified by way of family settlement/arrangement. If the property is allotted by father to his son, who is legal heir by family arrangement such can not be said as breach of condition for allotment of land. As such, on correct interpretation of conditions for allotment of land if the land is transferred in favour of some third party or to the person other than the successor in title who are direct decedent as per Hindu Succession Act, then only it can be said as transfer and thereby the breach of the conditions for allotment. In the present case, the revenue authorities including the Dist.Collector have relied upon one of the release deeds without consideration executed by the mother of the petitioner in favour of the petitioner. Even if such release deed is executed by the mother of the petitioner, the same is without consideration and therefore consequently it would not make any difference for arriving at final conclusion that the same can not be said to be transfer on the basis of which it can be said that there is breach of condition for allotment of the land.

6. In view of the above, the impugned order passed by the Dy.Collector and its confirmation thereof by the Collector and the State Govt is without there being any lawful basis and hence same can not be sustained in the eye of law.

7. In the result, the impugned orders are quashed and set aside. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances there shall be no order as to costs.

20.12.2004 (JAYANT PATEL,J)